



**Kerema v Republic (Criminal Application E028 of 2024)
[2024] KECA 904 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 904 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E028 OF 2024
A ALI-ARONI, JA
JULY 26, 2024**

BETWEEN

BONIFACE KEREMA APPLICANT

AND

REPUBLIC RESPONDENT

(An appeal against the conviction and sentence of the High Court at Narok (J. Bwonwong'a, J.) delivered on 11th December 2019 in HCCRA No. 138A of 2017)

RULING

1. Before the court is an application by way of a notice of motion dated 29th February 2024 seeking an extension of time to file an appeal out of time. The application is predicated on the grounds on the face of the application; that the court erred in law; in convicting the appellant yet identification was not proved; the identification parade was not conducted appropriately; the appellant could not appeal on time because he was not supplied with the High Court judgment on time to enable him to appeal on time.

The application is further supported by the affidavit of the applicant where he has rehashed the grounds on the face of the application.
2. The respondent has filed submissions dated 5th July 2024 and does not oppose the application. The respondent submits that though the delay in filing the appeal is inordinate, the applicant's sentence is lengthy, and, given the nature of the sentence, being life imprisonment, the respondent does not oppose the application.
3. I have considered the application, the affidavit in support, and the submissions made. The issue for determination is whether the applicant deserves the orders sought under Rule 4 of the Court of Appeal Rules which governs extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.



4. In the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, the Supreme Court of Kenya pronounced itself on the question of extension of time follows:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

5. This Court in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi*, Civil Appeal No. 255 of 1997, on the exercise of discretionary powers when considering an application for enlargement of time stated:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that, in general, the matters which this Court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly the reason for the delay; thirdly possibly the chances of the appeal succeeding if the application is granted; and fourthly the degree of prejudice to the respondent if the application is granted.”

6. The reason for the delay is cited as being the delay in receiving the High Court proceedings and the fact that follow-up was difficult due to the applicant’s incarceration. The delay is certainly long; it is more than 4 years since the judgment, however, as observed by the respondent the applicant was sentenced to life imprisonment. It is also possible that the applicant faced difficulties in chasing the proceedings. Further bearing in mind the emerging jurisprudence on indefinite sentences this is a matter that may require further interrogation by this Court.
7. In the circumstances, the application be and is hereby allowed. The memorandum of appeal annexed to the application is deemed as duly filed.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY JULY, 2024.

ALI-ARONI

JUDGE OF APPEAL

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I certify that this is a true copy of the original,

SIGNED

DEPUTY REGISTRAR.

